

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY DARNELL THOMAS,

No. C 11-04709 CW (PR)

Petitioner,

v.

MATTHEW CATE,

Respondent.

ORDER GRANTING MOTION TO STAY  
HABEAS PROCEEDINGS; GRANTING  
LEAVE TO PROCEED IN FORMA  
PAUPERIS; DIRECTING CLERK OF  
THE COURT TO ADMINISTRATIVELY  
CLOSE CASE UNTIL STAY IS LIFTED

(Docket nos. 2, 3)

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also has filed a motion to stay the petition while he exhausts his ineffective assistance of counsel claims in state court.

A district court may stay a mixed habeas petition, i.e., a petition containing both exhausted and unexhausted claims, to allow the petitioner to exhaust state court remedies as to those claims that have not yet been presented to the state's highest court. See Rhines v. Webber, 544 U.S. 269, 277-78 (2005). In Rhines, the Supreme Court discussed the stay-and-abeyance procedure, explaining that a stay and abeyance "is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court," the claims are not meritless, and there are no intentionally dilatory litigation tactics by the petitioner. Id. If the stay is granted, the petitioner does not have to worry that his newly-exhausted claims will be barred by the statute of limitations because those claims remain pending in federal court. King v. Ryan, 564 F.3d 1133, 1139, 1140 (9th Cir. 2009).

1 Here, it appears that good cause exists for Petitioner's  
2 failure to exhaust his claims of ineffective assistance of trial  
3 and appellate counsel on direct appeal because such claims must be  
4 raised by way of state habeas corpus. Moreover, the claims state  
5 cognizable bases for federal habeas relief. Further, this is  
6 Petitioner's first habeas petition, and there is no evidence that  
7 he seeks the stay for improper purposes. Accordingly, the Court  
8 GRANTS Petitioner's request for a stay.

9 These proceedings are hereby STAYED pending Petitioner's  
10 exhaustion of his state judicial remedies. Nothing further will  
11 take place in this action until the Court decides further action is  
12 appropriate or until Petitioner exhausts the unexhausted claims  
13 and, within **thirty days** of doing so, moves to reopen this action  
14 and lift the stay.

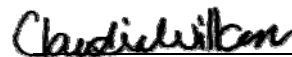
15 Petitioner's motion for leave to proceed in forma pauperis is  
16 GRANTED.

17 The Clerk of the Court shall ADMINISTRATIVELY CLOSE the file  
18 pending the stay of this action.

19 This Order terminates Docket nos. 2 and 3.

20 IT IS SO ORDERED.

21 Dated: 10/26/2011



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

LARRY D THOMAS,

Plaintiff,

v.

MATTHEW CATE et al,

Defendant.

Case Number: CV11-04709 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 26, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Larry Darnell Thomas V91749  
3C05 104Low  
CSP - Corcoran  
P.O. Box 3471  
Corcoran, CA 93212-3471

Dated: October 26, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California